

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

JACOB SMITH,

Plaintiff,

v.

CHARLES DANIELS, *et al.*,

Defendants.

Case No. 3:20-cv-00299-MMD-CSD

ORDER

Pro se Plaintiff Jacob Smith filed a civil rights complaint under 42 U.S.C. § 1983. Before the Court is the Report and Recommendation (“R&R” or “Recommendation”) of United States Magistrate Judge Craig S. Denney (ECF No. 40), recommending that Defendants’ motion for summary judgment (ECF No. 34) be denied, and that Defendant John Doe 1 be dismissed without prejudice. Smith had until September 1, 2022, to file an objection. To date, no objection to the R&R has been filed. For this reason, and as explained below, the Court adopts the R&R in full, and will deny Defendants’ motion for summary judgment and dismiss Defendant John Doe 1 without prejudice.

The Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party fails to object to a magistrate judge’s recommendation, the Court is not required to conduct “any review at all . . . of any issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1116 (9th Cir. 2003) (“De novo review of the magistrate judges’ findings and recommendations is required if, but *only* if, one or both parties file objections to the findings and recommendations.”) (emphasis in original); Fed. R. Civ. P. 72, Advisory Committee Notes (1983) (providing that the Court “need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”).

1 Because there is no objection, the Court need not conduct *de novo* review, and is
2 satisfied Judge Denney did not clearly err. Here, Judge Denney recommends denying
3 Defendant's motion for summary judgment (ECF No. 34) because there is a genuine
4 issue of material fact as to whether Defendants employed a race-based classification in
5 requesting Smith move to another unit in August 2019. (ECF No. 40 at 7-8.) Further,
6 Judge Denney recommends the Court find Defendants are not entitled to qualified
7 immunity because it was clearly established at the time that race-based classifications
8 violate the Fourteenth Amendment's equal protection clause if not supported by a
9 demonstrated compelling government interest that is implemented by the least restrictive
10 means. (*Id.* at 8.) Lastly, Judge Denney recommends that Defendant John Doe 1 be
11 dismissed without prejudice under Federal Rule of Civil Procedure 4(m) because Smith
12 failed to timely identify him or her. (*Id.* at 2.) The Court agrees with Judge Denney. Having
13 reviewed the R&R and the record in this case, the Court will adopt the R&R in full.

14 It is therefore ordered that Judge Denney's Report and Recommendation (ECF
15 No. 40) is accepted and adopted in full.

16 It is further ordered that Defendants' motion for summary judgment (ECF No. 34)
17 is denied.

18 It is further ordered that Defendant John Doe 1 is dismissed without prejudice.

19 DATED THIS 7th Day of September 2022.

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22 MIRANDA M. DU
23 CHIEF UNITED STATES DISTRICT JUDGE
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